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UNCLAS SENSITIVE KUWAIT 00598

SIPDIS
CXKUWAIT:

ACTION: POL
INFO: DUTYOFCR FCS OMC OMCOPS DCM AMB PAS ECON CONS
POLMIL

DISSEMINATION: POLX
CHARGE: PROG

APPROVED: CDA:FURBANCIC
DRAFTED: POL:KIMIDHA
CLEARED: A/DCM:RKBELL, CONS:SMURPHY

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RR RUEHC RUEHZM RUEHAM RUEHTU
DE RUEHKU #0598/01 0540718
ZNR UUUUU ZZH
R 230718Z FEB 04
FM AMEMBASSY KUWAIT
TO RUEHC/SECSTATE WASHDC 2069
INFO RUEHZM/GULF COOPERATION COUNCIL COLLECTIVE
RUEHAM/AMEMBASSY AMMAN 1304
RUEHTU/AMEMBASSY TUNIS 0682

UNCLAS SECTION 01 OF 03 KUWAIT 000598

SIPDIS

SENSITIVE

DEPT FOR NEA/ARP, NEA/REA, DRL/PHD, DRL/CRA, CA/OCS/ACS/NEA
TUNIS FOR NATALIE BROWN

E.O. 12958: N/A
TAGS: [PHUM](#) [PGOV](#) [PREL](#) [KWMN](#) [CASC](#) [KU](#)
SUBJECT: (SBU) FEMALE LAWYERS BREAK TABOO AGAINST
DISCUSSION OF DOMESTIC VIOLENCE

REF: KUWAIT 05764

(U) SENSITIVE BUT UNCLASSIFIED; PROTECT ACCORDINGLY.

1.(SBU) SUMMARY: Kuwait's family law code, which governs personal status matters such as marriage, divorce, and inheritance, offers numerous protections to women, including a provision for divorce on grounds of domestic abuse. However, there are no shelters or hotlines for domestic violence victims, and no provisions or institutionalized procedures for removal of domestic violence victims from abusive households. The law provides no clear legal standard as to what constitutes abuse, and assistance to victims of child abuse, in particular, is limited except in the most egregious cases. Socially and culturally, the subject of domestic violence remains taboo and regarded by many as a private family matter. As a result, many victims are unwilling to come forward to authorities to report abuses. A few influential female lawyers are advocating for reform of Kuwait's family law code to better protect women and children who are victims of domestic violence. They meet informally on a regular basis to share experiences and develop advocacy strategies. While the women have not yet put forward any specific proposals to amend Kuwait's family law code, they have broadened the public debate on the sensitive issue of domestic violence and, through their own legal and advocacy work, are encouraging more women to report abuses. END
SUMMARY.

(U) Family Law and Domestic Violence

2.(SBU) Kuwait's family law code, based on the Maliki school of Sunni Islamic jurisprudence, was promulgated in 1984 and contains 347 articles governing marriage, divorce, child custody, inheritance, and other personal status matters. It has been amended only slightly since 1984. (Note: Shi'a have

their own family law courts at the first-instance and appellate levels to adjudicate Shi'a personal status matters in accordance with Shi'a jurisprudence. In October 2003, the GOK approved a long-standing Shi'a request to establish a Shi'a Court of Cassation, or "Supreme Court," to handle Shi'a personal status cases. End Note). Article 126 of the family law code addresses domestic violence and states that abuse, whether committed by the husband or the wife, is grounds for divorce. However, it does not provide a clear legal standard as to what constitutes abuse and therefore gives family law judges tremendous discretion in abuse cases. A prominent female lawyer and women's rights activist, Dr. Badria Al-Awadi (protect throughout), told Poloff that many judges refer to social and cultural "norms" to make determinations in domestic abuse cases because the law is vague. She said they tend to look, for example, at a woman's social position, tribal affiliation, or educational background to determine whether or not the abuse is "acceptable" (i.e., whether it is "common" for a woman of a certain social standing to be "insulted" physically by her husband). There are no female judges or prosecutors in Kuwait. There are criminal laws against rape, sexual assault, incest, and other "moral" crimes, and such crimes are considered felonies. However, there are no provisions of the family law code that deal specifically with child abuse, battery, or provide for the removal of abuse victims into the protective custody of a third party or shelter. According to Waem Al-Misri, another prominent female lawyer interested in domestic abuse cases (protect throughout), police officials, lawyers, and family law courts sometimes dismiss legitimate abuse cases due to lack of documented evidence of the abuse. As elsewhere, if there is no documented evidence (i.e., doctor's report, police report, social worker testimony), she added, it is easy for abusive husbands to deny the abuse and difficult for attorneys to win abuse cases in court.

3.(SBU) Female lawyers point out other problems with Kuwait's family law code. One provision in particular, derived from French Napoleonic law rather than Islamic Shari'a, gives a husband the right to kill his wife in a "crime of passion" if he finds her "in the act" with another man. Instead of life imprisonment or hanging, the two most severe criminal punishments, the husband will typically serve from 6 months to 3 years in prison as such a crime is not regarded as a felony. However, Dr. Al-Awadi pointed out, if a woman finds her husband "in the act" with another woman, she does not have the right, by law, to kill him in an "act of passion." If she does, it is regarded as a felony and she would most likely be sentenced to life in prison. Dr. Al-Awadi said although such acts are rare in Kuwait, the law must be reformed to better protect the rights and welfare of married women. (Note: A local English language daily reported on February 18 that police arrested a Kuwaiti man for allegedly killing his wife in their home as a result of his suspicions that she was "flirting" with another man. End Note).

(U) Divorce Rights and Options

4.(SBU) Female lawyers uniformly praise one aspect of Kuwait's personal status law that benefits women seeking divorce from their husbands. The personal status or family law grants women the right of "khul'", the right to a divorce by court order on condition that the woman relinquish many if not most of her financial and other entitlements (but not custody of her children). Some of the financial entitlements a woman must forego in order to divorce her husband under this Shari'a practice include the financial sum agreed upon by both parties to be paid to the woman in case of divorce (instituted by the male, the Islamic precursor of a pre-nuptial agreement), alimony payments, and her share of property or other financial assets. In 2002, according to Dr. Al-Awadi, there were more than 800 cases of "khul'" in Kuwait, up significantly from previous years. Most women, she acknowledged, are not willing to give up their legal rights to marital property and financial assets. However, as divorce proceedings can often drag on in family law courts for some time, more women are starting to utilize this option. Dr.

Al-Awadi said "khul'" might be an especially favorable divorce option for foreign women, including American citizen women, seeking a quick "no hassle" divorce and return to their home countries.

(U) Lack of Shelters Hinders Victim Assistance

5.(SBU) The lack of shelters or other forms of community assistance to domestic abuse victims is an area of concern for female lawyers and some women's rights activists. It reflects the cultural taboo against airing "private" family matters and the widespread belief in the sanctity of the patriarchal family as the fundamental societal unit. Lawyer Al-Misri, who is particularly interested in child abuse and incest cases, informed Poloff of a recent "honor killing" of a teenage citizen girl by her relatives because the girl apparently became pregnant after being raped repeatedly by her own father and brother. The hospital in which the girl delivered the child released her into the custody of the abusive family because, Al-Misri said, the girl was a minor (under age 18 and therefore under the primary guardianship of her father) and there are no third party custody alternatives or shelters. Al-Misri plans to take up the case arguing that the girl should never have been released from the hospital without intervention by social workers or access to an attorney to protect her rights and welfare. She plans to use this and other similar cases to win broader support for amending the family law code to include specific provisions guaranteeing the safety and rights of abuse victims, particularly children.

6.(SBU) COMMENT: Influential female lawyers and women's rights activists agree that Kuwait's family law code upholds numerous basic rights of women in matters of personal status and guarantees women many valuable protections, particularly in cases of divorce. Most believe that a major obstacle facing women in Kuwait is lack of knowledge about their rights and the legal protections available to them. Nevertheless, they advocate for amendment of the family law code to address remaining weaknesses that adversely affect women, particularly the addition of provisions dealing specifically with child abuse, battery, and protective custody issues. Although they have not yet developed any specific reform proposals, they are raising awareness and encouraging discussion about sensitive and often ignored problems. In order to support such local advocacy efforts, post sent lawyer Waem Al-Misri to Jordan this month to participate in the MEPI-funded "Women and the Law" workshop to dialogue with other Arab women on reforming aspects of law that fail to protect the rights of women and children. It appears that at least some parliamentarians and government officials are starting to listen to women's legal concerns. The National Assembly's Legal and Legislative Affairs Committee this month announced that it has added to its official agenda a draft bill granting Kuwaiti women married to foreign men the right to government-provided housing allowances, a right long demanded by women's rights groups. Another female lawyer, Dr. Kawthar Al-Jouan, told Poloff recently that she expects the government to approve and license her new NGO, Women's Development and Training Institute, by May, to educate women about their legal rights, assist women involved in family law disputes, and advocate for stronger protections for women. (Note: This would be significant considering the GOK has only licensed 6 new NGOs since 1985).

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